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**FILED**

**MAR 21 2013**

**Board of Vocational Nursing  
and Psychiatric Technicians**

8 **BEFORE THE**  
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke  
12 Probation Against:

Case No. VN-2006-450

13 **DAVID GODINEZ**  
14 2979 Marengo Street #309  
15 Los Angeles, CA 90033  
16 **Vocational Nurse License No. VN 201944**

**PETITION TO REVOKE PROBATION**

15 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Petition to Revoke  
20 Probation solely in her official capacity as the Executive Officer of the Board of Vocational  
21 Nursing and Psychiatric Technicians, Department of Consumer Affairs.

22 2. On or about December 10, 2002, the Board of Vocational Nursing and Psychiatric  
23 Technicians issued Vocational Nurse License Number VN 201944 to David Godinez  
24 (Respondent). The Vocational Nurse License was in effect at all times relevant to the charges  
25 brought herein, and will expire on June 30, 2014, unless renewed.

26 3. In a disciplinary action entitled "*In the Matter of the Accusation Against David*  
27 *Godinez*," Case No. VN-2006-450, the Board of Vocational Nursing and Psychiatric Technicians,  
28 issued a decision, effective July 18, 2008, in which Respondent's Vocational Nurse License was

1 revoked. However, the revocation was stayed, and Respondent's Vocational Nurse License was  
2 placed on probation for a period of five (5) years under certain terms and conditions. A copy of  
3 that Decision is attached as Exhibit A, and is incorporated by reference.

4 4. On or about June 7, 2012, the Board requested that the Attorney General's Office  
5 (AGO) prepare a Petition to Revoke Probation against the Respondent's license, thereby  
6 automatically extending the probationary period, which shall not expire until the Petition to  
7 Revoke Probation has been acted upon by the Board.

### 8 JURISDICTION

9 5. This Petition to Revoke Probation is brought before the Board of Vocational Nursing  
10 and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the  
11 following laws. All section references are to the Business and Professions Code unless otherwise  
12 indicated.

13 6. Section 2878 of the Business and Professions Code (Code) provides, in pertinent part,  
14 that the Board may discipline any licensed vocational nurse for any reason provided in Article 3  
15 of the Vocational Nursing Practice Act (Code § 2840, et. seq.)

16 7. Section 118, subdivision (b), provides, in pertinent part, that the "expiration of a  
17 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the  
18 period within which the license may be renewed, restored, reissued or reinstated."

19 8. Probation Term/Condition (18) of the Disciplinary Order and Decision in Case No.  
20 VN-2006-450 found at page 13 of the Decision provides:

21 **"Violation of Probation.** If respondent violates any condition(s) of his probation, the  
22 Board, after giving Respondent notice and an opportunity to be heard, may set aside the  
23 stay order and impose the stayed discipline (revocation) of Respondent's license. If, during  
24 the period of probation, an accusation or petition to revoke probation has been filed against  
25 Respondent's license or the Attorney General's Office has been requested to prepare an  
26 accusation or petition to revoke probation against Respondent's license, the probationary  
27 period shall automatically be extended and shall not expire until the accusation or petition  
28 has been acted upon by the Board. Upon successful completion of probation, Respondent's  
license will be fully restored."

### 27 STATUTORY PROVISIONS

28 9. Section 2878 of the Code states:

"The board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (*Bus. & Prof Code*, § 2840, et seq.)] for any of the following:

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or terms of this chapter."

### **FIRST CAUSE TO REVOKE PROBATION**

#### ***(Compliance With Probation Program and Quarterly Report Requirements)***

10. At all times after the effective date of Respondent's probation, Term 2 states:

"Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of Respondent's compliance with the Probation Program.

Respondent shall submit quarterly reports, under penalty of perjury, in a form required by the Board. The reports shall certify and document compliance with all of the conditions of probation."

11. Respondent's probation is subject to revocation because he failed to comply with Probation Term 2, referenced above. The facts and circumstances regarding this violation are that Respondent failed to cooperate with the Board's representatives in the monitoring of his compliance with the Probation Program, as required. Respondent failed to submit *Quarterly Written Report* forms certifying and documenting his compliance with the conditions of probation for the following reporting periods:

<b><u>Reporting Period</u></b>	<b><u>Due Date</u></b>
April – June 2011	July 7, 2011
July – September 2011	October 7, 2011
October – December 2011	January 7, 2012
January – March 2012	April 7, 2012
April – June 2012	July 7, 2012
July – September 2012	October 7, 2012
October – December 2012	January 7, 2013

In addition, the following reports were submitted after the final due date:

<b><u>Reporting Period</u></b>	<b><u>Due Date</u></b>	<b><u>Date Received</u></b>	<b><u>Days Delinquent</u></b>
October – December 2009	January 7, 2010	January 15, 2010	8
January – March 2010	April 7, 2010	April 19, 2010	12
October – December 2010	January 7, 2011	February 24, 2011	48
January – March 2011	April 7, 2011	April 9, 2011	2

## **SECOND CAUSE TO REVOKE PROBATION**

### ***(Notification to Employers)***

12. At all times after the effective date of Respondent's probation, Term 5 states:

"When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify his employer of the probationary status of his license. This notification to Respondent's current health care employer shall occur no later than the effective date of this Decision. Respondent shall notify any prospective health care employer of his probationary status with the Board prior to accepting such employment. This notification shall be made by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision."

13. Respondent's probation is subject to revocation because he failed to comply with Probation Term 5, referenced above. The facts and circumstances regarding this violation are that Respondent failed to submit *Work Performance Evaluation Forms* for the following time periods:

<b><u>Reporting Period</u></b>	<b><u>Due Date</u></b>
April – June 2011	July 7, 2011
July – September 2011	October 7, 2011
April – June 2012	July 7, 2012
July – September 2012	October 7, 2012
October – December 2012	January 7, 2013

In addition, the following reports were submitted after the final due date:

<b><u>Reporting Period</u></b>	<b><u>Due Date</u></b>	<b><u>Date Received</u></b>	<b><u>Days Delinquent</u></b>
October – December 2009	January 7, 2010	January 15, 2010	8
January – March 2010	April 7, 2010	April 19, 2010	12
October – December 2010	January 7, 2011	February 24, 2011	48
January – March 2011	April 7, 2011	April 9, 2011	2
October – December 2011	January 7, 2012	February 16, 2012	40
January – March 2012	April 7, 2012	June 13, 2012	157

## **THIRD CAUSE TO REVOKE PROBATION**

### ***(Cost Recovery Requirements)***

14. At all times after the effective date of Respondent's probation, Term 11 states, in pertinent part:

"Respondent shall reimburse the Division the amount of \$3,263.50 for its investigative and prosecution costs. Respondent shall make timely payment as directed in the Board's Decision pursuant to Business and Professions Code section 125.3. Failure to make payments in accordance with any formal agreement entered into with the Board, or pursuant to any Decision by the Board, shall be considered a violation of probation..."

1           15. Respondent's probation is subject to revocation because he failed to comply with  
2 Probation Term 11, referenced above. On September 17, 2008, at the initial probation  
3 compliance meeting with Board staff, a cost payment plan was agreed to as follows: Beginning  
4 October 15, 2008, forty-two (42) monthly payments of \$76.00 and one (1) final payment of  
5 \$71.50. Respondent has made only sporadic payments. Respondent still owes \$1,059.50.

6                                   **FOURTH CAUSE TO REVOKE PROBATION**

7                                   ***(Psychotherapy)***

8           16. At all times after the effective date of Respondent's probation, Term 12 states, in  
9 pertinent part:

10           ". . . Respondent shall cause the therapist to submit to the Board a written report concerning  
11 Respondent's psychotherapy status and progress as well as such other information as may  
12 be requested by the Board. The initial psychotherapy report shall be submitted within 90  
13 days from the effective date of this Decision. Respondent shall cause the therapist to  
14 submit quarterly written reports to the Board concerning Respondents fitness to  
15 practice, progress in treatment and to provide such other information as may be required by  
16 the Board. . ."

17           17. Respondent's probation is subject to revocation because he failed to comply with  
18 Probation Term 12, referenced above. Respondent has failed to submit a quarterly psychological  
19 report from the registered mental health professional approved by the Board for the following  
20 reporting periods:

21                   **Reporting Period**

22           April – June 2011  
23           July – September 2011  
24           October – December 2011  
25           January – March 2012  
26           April – June 2012  
27           July – September 2012  
28           October – December 2012

**FIFTH CAUSE TO REVOKE PROBATION**

***(Submit Biological Fluid Samples)***

18           18. At all times after the effective date of Respondent's probation, Term 17 states:  
19           "Respondent shall immediately submit to biological fluid testing, at Respondent's cost,  
20 upon request by the Board or its designee. There will be no confidentiality in test results;  
21 positive results will be immediately reported to the Board and Respondent's current  
22 employer."

1           19. Respondent's probation is subject to revocation because he failed to comply with  
2 Probation Term 17, referenced above. Respondent failed to submit to random biological fluid  
3 testing as required. Respondent was instructed by the Board to complete enrollment with  
4 Phamatech Incorporated and begin the required daily check-in by September 1, 2010.

5 Respondent was selected for random testing and failed to appear on the following dates:

6           December 28, 2010

7           January 13, 2011

8           February 15, 2011

9           May 2, 2011

10          May 31, 2011

11          June 29, 2011

12          July 5, 2011

13          July 21, 2011

14          August 4, 2011

15          August 15, 2011

16          September 6, 2011

17          September 22, 2011

18          October 6, 2011

19          October 17, 2011

20          November 15, 2011

21          November 30, 2011

22          December 5, 2011

23          December 20, 2011

24          January 3, 2012

25          January 24, 2012

26          February 8, 2012

27          February 21, 2012

28          March 6, 2012

          March 21, 2012

          April 3, 2012

          April 26, 2012

          May 14, 2012

          May 16, 2012

          June 1, 2012

          June 14, 2012

          July 9, 2012

          July 24, 2012

          August 15, 2012

          August 24, 2012

          September 7, 2012

          September 11, 2012

          October 2, 2012

          October 19, 2012

          November 13, 2012

          December 3, 2012

          February 4, 2013

February 12, 2013

20. In addition, Respondent failed to check-in with Phamatech on five hundred and forty-six (546) separate dates.

**PRAYER**

*WHEREFORE*, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking the probation that was granted by the Board of Vocational Nursing and Psychiatric Technicians in Case No. VN-2006-450 and imposing the disciplinary order which was stayed, thereby revoking Vocational Nurse License No. VN 201944 issued to David Godinez;
2. Revoking or suspending Vocational Nurse License No. VN 201944 issued to David Godinez; and
3. Taking such other and further action as deemed necessary and proper.

DATED: March 21, 2013.



TERESA BELLO-JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
*Complainant*

## **Exhibit A**

### **Decision and Order**

**Board of Vocational Nursing and Psychiatric Technicians Case No. VN 2006-450**



BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. VN-2006-450

DAVID GODINEZ  
2979 Marengo Street #309  
Los Angeles, CA 90033

OAH No. L2007120248

Vocational Nurse License  
No. VN 201944

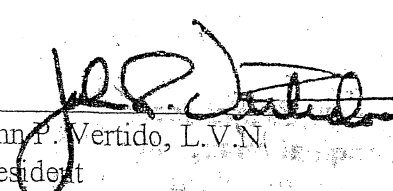
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled matter.

This Decision shall become effective on July 18, 2008.

IT IS SO ORDERED this 18<sup>th</sup> day of June, 2008.

  
John P. Vertido, L.V.N.  
President

**BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation Against:**

**DAVID GODINEZ**

**Vocational Nurse License No. VN 201944**

**Respondent.**

**Case No. VN-2006-450**

**OAH No. L2007120248**

**PROPOSED DECISION**

This matter came on regularly for hearing on March 27, 2008, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) was represented by Desiree Tulleners, Deputy Attorney General.

David Godinez (Respondent) was present and was represented by James Victor Kosnett, Attorney at Law.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

**FACTUAL FINDINGS**

The Administrative Law Judge makes the following Factual Findings:

1. Complainant made the Accusation in her official capacity as Executive Officer, Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs, State of California (Board).

2. On December 10, 2002, the Board issued Vocational Nurse License No. VN 201944 to Respondent. The license will expire on June 30, 2008, unless renewed.

3. On November 22, 2005, in the Superior Court of California, County of Los Angeles, in Case No. 5CR12901, Respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 23103, subdivision (a) (reckless driving on a highway), a misdemeanor substantially related to the functions and duties of a vocational nurse.

4. Respondent was placed on summary probation for a period of 24 months under various terms and conditions including payment of fines, fees and assessments totaling \$216, performance of 150 hours of community service, and a prohibition against possessing narcotics, dangerous or restricted drugs or associated paraphernalia.

5. The facts and circumstances underlying the conviction are that Respondent drove a vehicle in a reckless manner, failing to stop at three stop signs and causing an unmarked police car to brake suddenly in order to avoid a collision with him.

6. On November 15, 2006, in the Superior Court of California, County of Los Angeles, in Case No. 6MP10847, Respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b) (driving a vehicle while having .08 percent or more alcohol in his blood), a misdemeanor substantially related to the functions and duties of a vocational nurse. Respondent was still on probation from his November 2005 conviction at the time he suffered the conviction in November 2006.

7. Respondent was placed on summary probation for a period of 36 months under various terms and conditions including payment of fines, fees and assessments totaling \$1,690, participation in and successful completion of a three-month, first-offender alcohol/drug education and counseling program, and attendance at a MADD<sup>1</sup> Victims' Impact Program. Respondent is still on probation from that conviction.

8. The facts and circumstances underlying the conviction are that, while under the influence of alcohol, Respondent drove at 100 mph in a 55 mph zone and abruptly changed lanes to pass slower traffic.

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<sup>1</sup> MADD is an acronym for Mothers Against Drunk Driving.

9. The following facts were established as factors in aggravation:

a. On January 31, 1995, in the Municipal Court of East Los Angeles Judicial District, County of Los Angeles, State of California, in Case No. 94M11807, Respondent was convicted, on his plea of guilty, of violating Penal Code section 148, subdivision (a) (resisting arrest/public officer), a misdemeanor substantially related to the qualifications, functions and duties of a vocational nurse. Respondent was placed on summary probation for a period of one year under various terms and conditions including incarceration in the Los Angeles County Jail for two days with credit for one day served. The facts and circumstances underlying the conviction are that, while under the influence of alcohol, Respondent became embroiled in a physical fight with another man outside of a bar. Respondent physically resisted the police when they attempted to arrest him.

b. On May 24, 1995, the Court issued a bench warrant following Respondent's failure to appear at a post-conviction hearing. The bench warrant was recalled after Respondent was taken into custody on or about January 7, 2000. On that day, Respondent stipulated to a probation violation, and was convicted of and was credited with four days served and two days good time/work time. Respondent had failed to appear in court because he forgot the date of the appearance.

10. On July 9, 2006, Citation No. 060087-L was issued against Respondent. The evidence did not disclose the reason for that citation.

11. All of Respondent's convictions relate to a lengthy history of drug and alcohol dependence which appears to have commenced shortly after 1986 when Respondent was 19 or 20 years old. At that time, Respondent learned he was HIV<sup>2</sup> positive. Although the news had a tremendous impact on him because he considered it a "death sentence," he "sort of saw it as a challenge." (Respondent's terms.) He decided to "give back to the community" by pursuing his long-held interest in medicine.

12. However, in approximately 1992, Respondent began experiencing problems with alcohol and other drugs. He admitted himself into Kaiser Permanente's outpatient drug and alcohol program, and he began attending Alcoholics Anonymous (AA) meetings. In 1995, following his conviction for resisting arrest, he began therapy with Lynda Barrad, LMFT, in Kaiser Permanente's Addiction Medicine Department.

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<sup>2</sup> Human immunodeficiency virus.

13. At the time he became licensed as a Licensed Vocational Nurse (LVN), Respondent had been working at Kaiser Permanente as a medical secretary in the Cardiac Care Unit of one of the Kaiser Foundation hospitals. He remained on at Kaiser Permanente as an LVN following his licensure, and he has remained in that employ to the present. Since 2003, Respondent has received numerous "On the Spot" certificates from his co-workers (including physicians) and patients, indicating that he has performed with exceptional skill and/or caring. In 2004, he received a Service Award from the Department of Internal Medicine as the "Most On-the-Spot Recipient." Respondent has received consistently positive work evaluations.

14. In 2004, Respondent was accepted by two registered nursing schools. He chose Mount St. Mary's College and entered its Associate of Arts program. Because he had no means of support other than himself, he continued to work at Kaiser Permanente during the day while attending classes in the evening. Respondent completed the first year of study with a "B" average.

15. In approximately August 2005, Respondent learned that his HIV had developed into AIDS<sup>3</sup>. It was during that month that he was arrested for the incident that resulted in his 2005 conviction. At the time of his arrest, Respondent was in possession of crystal methamphetamine. He returned to the Kaiser Permanente Chemical Dependency Recovery Program, returned to therapy with Ms. Barrad, and began attending AA meetings again. (The evidence did not disclose when or why he had previously terminated those activities.)

16. In approximately November 2005, Respondent was hospitalized with an "opportunistic infection" related to AIDS. During the same hospitalization, exploratory surgery revealed an ulceration which required the removal of eight inches of intestine. Respondent was unable to return to work until March 2006, but when he did so, he continued to render excellent care that attracted the attention of his patients and co-workers. Respondent's illness had caused him to postpone additional classes toward his Associate of Arts degree in nursing. However he continued to accrue continuing education credits, including credit for a 30-hour course entitled "How to Strengthen the Immune System."

17. In August 2006, Respondent was arrested in the incident that resulted in his conviction on November 15 of that year. On November 5, 2007, Respondent again returned to the Kaiser Permanente Addiction Medicine Clinic and resumed treatment. He also returned to AA. (Again, the evidence failed to establish when or why Respondent previously terminated those activities.)

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<sup>3</sup> Acquired immunodeficiency syndrome.

18. Respondent's chemical dependency has also included cocaine use. He no longer uses alcohol or other drugs. His alcohol sobriety date is September 7, 2007. His sobriety date for cocaine and methamphetamine is "early 2007." Respondent presently attends two or three AA meetings per week and continues to treat with Ms. Barrad. He has never been under the influence of drugs or alcohol while on duty at work at Kaiser Permanente.

19. Respondent believes that, especially at first, he did not deal very well with the fact that he was HIV positive. He implied that the reliance on drugs and alcohol was a method of coping with the reality of his physical condition. However, he has never permitted his chemical dependency problems to interfere with his work. He performs his job very well and takes a great deal of satisfaction from doing so. Although he initially believed he would not survive until this time, he no longer believes he will die in the near future. He now desires to continue with his career and complete his schooling. Respondent considers himself a "positive and valuable asset to the nursing community" and aspires to become a registered nurse "and maybe go beyond that."

20. Respondent believes he has continually learned from his mistakes, and he is willing to make radical changes in his life in order to overcome his addiction and maintain his career. He has never been in an inpatient rehabilitation program, but he is willing to do so. Respondent recognizes that he is engaged in a continuing day-by-day struggle with his chemical dependency.

21. The Board incurred costs, including attorney fees, in the total sum of \$3,263.50, in connection with the investigation and prosecution of this action. Those costs are deemed just and reasonable.

22. Complainant's counsel also requested additional costs of \$1,264 for eight hours of time she anticipated spending between the time on March 26, 2008, when she signed her Declaration and Certification of Costs, and the following morning at 9:00 a.m., when the hearing was scheduled to commence. That time is found to have been speculative, and Complainant failed to prove that any portion of it was spent as anticipated. The requested \$1,264 is disallowed.

## LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to discipline Respondent's vocational nurse license pursuant to Business and Professions Code sections 490 and 2878, subdivision (f), as defined in California Code of Regulations, title 16, section 2521, for conviction of substantially related crimes, as set forth in Findings 3, 4, 5, 6, 7 and 8.

2. Cause exists to discipline Respondent's vocational nurse license pursuant to Business and Professions Code sections 2878, subdivision (a), for unprofessional conduct, as defined in section 2878.5, subdivision (b), in that Respondent used alcoholic beverages to an extent, or in a manner dangerous or injurious to himself or the public, as set forth in Findings 6, 7 and 8.

3. Cause exists to discipline Respondent's vocational nurse license pursuant to Business and Professions Code sections 2878, subdivision (a), for unprofessional conduct, as defined in section 2878.5, subdivision (c), in that he was convicted of a crime involving the consumption of alcohol, as set forth in Findings 6, 7 and 8.

4. Cause exists to order Respondent to pay the costs claimed under Business and Professions Code section 125.3, as set forth in Findings 21 and 22.

5. Respondent has a lengthy history of drug and alcohol abuse. He has made several attempts at rehabilitation but has experienced a near equal number of relapses. At the administrative hearing, Respondent offered little evidence of rehabilitation, and what evidence he did offer was not strong. His sobriety date for cocaine and methamphetamine occurred approximately one year ago, and only seven months have elapsed since his alcohol sobriety date. In addition, he is still on criminal probation from his 2006 alcohol-related conviction. Since people have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally placed on the fact that an applicant has engaged in good behavior while on probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

6. Although Respondent has performed his job duties very well, and has not used alcohol or drugs while on duty at work, his past and present ability to separate his dependency from his work hours does not adequately protect the public. In *In re Kelley* (1990) 52 Cal.3d 487, 495, the Court stated:

[R]epeated criminal conduct, and the circumstances surrounding it, are indications of alcohol abuse that is adversely affecting petitioner's private life. We cannot and should not sit back and wait until petitioner's alcohol abuse problem begins to affect her practice of law.

7. The above factors notwithstanding, Respondent is dedicated to his career, and he is convinced he can overcome his addictions and be of great service to the public and to the nursing profession. In fact, his rehabilitation and continued nursing service is so important to him that he is prepared to enter an inpatient rehabilitation program to ensure his success.

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8. The primary purpose of a disciplinary action such as this one is to protect the public. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Although Respondent should be permitted to attempt to overcome his addictions in an inpatient program, the public cannot be placed at risk in connection with that attempt. If Respondent is placed on probation and is required, as a term of probation, to participate in an inpatient rehabilitation program, he would be free to return to work if he self-terminated from the program or was expelled. Although Complainant could then bring a petition to revoke probation, a final adjudication could take several months. During the pendency of that action, Respondent would still be free to work as a licensed vocational nurse unless he was precluded from doing so by an interim order of suspension. However, the granting of such a petition would be neither automatic nor guaranteed. Therefore, the public could remain at risk.

9. If Respondent is to be permitted to participate in an inpatient rehabilitation program, the public health, welfare, safety and interest can best be protected by requiring Respondent to successfully complete the program as a condition precedent to practicing as a licensed vocational nurse. Because of the minimal rehabilitation evidence Respondent offered at the hearing, additional terms and conditions such as continued psychotherapy, abstention from alcohol and drugs, and random drug testing must be included in the probationary order.

## ORDER

### WHEREFORE, THE FOLLOWING ORDER is hereby made:

Vocational Nurse License No. VN 201944, issued to Respondent, David Godinez, is revoked. However, the revocation is stayed and the license is placed on probation for a period of five years on the following terms and conditions:

#### 1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law to the Board within five days of occurrence. To ensure compliance with this term, Respondent shall submit two completed fingerprint cards and the applicable fingerprint processing fees to the Board within 30 days of the effective date of the decision, unless the Board determines that fingerprint cards were already submitted by Respondent as part of his licensure application process effective July 1, 1996. Respondent shall also submit a recent 2" x 2" photograph of himself within 30 days of the effective date of this decision.

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**2. COMPLIANCE WITH PROBATION PROGRAM AND QUARTERLY REPORT REQUIREMENTS**

Respondent shall fully comply with terms and conditions of the probation established by the Board and shall cooperate with the representatives of the Board in its monitoring and investigation of Respondent's compliance with the Probation Program.

Respondent shall submit quarterly reports, under penalty of perjury, in a form required by the Board. The reports shall certify and document compliance with all of the conditions of probation.

**3. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)**

Respondent shall notify the Board, in writing, within five days of a change of residence or mailing address, of his new address and any change in his work and/or home telephone numbers.

**4. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE**

Respondent shall notify the Board, in writing, within five days, if he leaves California to reside or practice in another state.

Respondent shall notify the Board, in writing, within five days, upon his return to California.

The period of probation shall not run during the time Respondent is residing or practicing outside California.

**5. NOTIFICATION TO EMPLOYER(S)**

When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify his employer of the probationary status of his license. This notification to Respondent's current health care employer shall occur no later than the effective date of this Decision. Respondent shall notify any prospective health care employer of his probationary status with the Board prior to accepting such employment. This notification shall be made by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

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The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit quarterly reports to the Board. The reports shall be on a form provided by the Board, shall include a performance evaluation and such other information as may be required by the Board.

Respondent shall notify the Board, in writing, within five days of any change in employment status. Respondent shall notify the Board, in writing, if he is terminated from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination.

#### **6. INTERVIEWS/MEETINGS WITH BOARD REPRESENTATIVE(S)**

Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board, or its designated representatives.

#### **7. EMPLOYMENT REQUIREMENTS AND LIMITATIONS**

During probation, after successful completion of an inpatient rehabilitation program, Respondent shall work in his licensed capacity in the State of California. This practice shall consist of no less than six continuous months and of no less than 20 hours per week.

While on probation, Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

#### **8. SUPERVISION REQUIREMENTS**

Respondent shall obtain prior approval from the Board, before commencing any employment, regarding the level of supervision provided to Respondent while employed as a licensed vocational nurse or psychiatric technician.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

## **9. COMPLETION OF EDUCATIONAL COURSE(S)**

Respondent, at his own expense, shall enroll and successfully complete a course or courses substantially related to the violations no later than the end of the first year of probation, or Respondent shall be suspended from practice until he has enrolled in and has successfully completed the specified coursework.

The coursework shall be in addition to that required for license renewal. The Board shall notify Respondent of the course content and number of contact hours required. Within 30 days of the Board's written notification of assigned coursework, Respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of each course, Respondent shall cause the instructor to furnish proof to the Board within 30 days of course completion.

## **10. MAINTENANCE OF VALID LICENSE**

Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled.

Should Respondent's license, by operation of law or otherwise, expire, upon renewal or reinstatement Respondent's license shall be subject to any and all terms of this probation not previously satisfied.

## **11. COST RECOVERY REQUIREMENTS**

Respondent shall reimburse the Division the amount of \$3,263.50 for its investigative and prosecution costs. Respondent shall make timely payment as directed in the Board's Decision pursuant to Business and Professions Code Section 125.3. Failure to make payments in accordance with any formal agreement entered into with the Board, or pursuant to any Decision by the Board, shall be considered a violation of probation.

The Board may conditionally renew or reinstate, for a maximum of one year, the license of any respondent who demonstrates financial hardship. If such financial hardship exists, Respondent shall enter into a formal agreement with the Board to reimburse the unpaid costs within that one year period.

Except as provided above, the Board shall not renew or reinstate the license of any Respondent who has failed to pay all the costs as directed in a Decision.

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## 12. PSYCHOTHERAPY

Within 60 days of the effective date of this Decision, Respondent shall submit to the Board the name of one or more proposed therapists for prior approval. Respondent shall participate in ongoing psychotherapy with a California licensed or legally registered mental health professional who has been approved by the Board. Upon approval by the Board, Respondent shall commence psychotherapy. Respondent shall provide the therapist with a copy of the Board's Disciplinary Order no later than the first counseling session. Counseling shall be at least once a week unless otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. The cost of such therapy shall be paid by Respondent.

Respondent shall cause the therapist to submit to the Board a written report concerning Respondent's psychotherapy status and progress as well as such other information as may be requested by the Board. The initial psychotherapy report shall be submitted within 90 days from the effective date of this Decision. Respondent shall cause the therapist to submit quarterly written reports to the Board concerning Respondent's fitness to practice, progress in treatment and to provide such other information as may be required by the Board.

If the therapist finds that Respondent is not psychologically fit to practice safely, or can practice only with restrictions, the therapist shall notify the Board, in writing, within five working days. The Board shall notify Respondent in writing of the therapist's determination of unfitness to practice and shall order Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of Respondent's fitness to practice safely and has so notified Respondent. Respondent shall document compliance with this condition in the manner required by the Board.

## 13. REHABILITATION PROGRAM

Within 30 days of the effective date of this Decision, Respondent shall enter an inpatient rehabilitation and monitoring program specified by the Board. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board.

Components of the treatment contract shall be relevant to the violation and to Respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random bodily fluid testing, abstention from drugs and alcohol, use of work site monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations and other appropriate rehabilitation or monitoring programs. The cost for participation in this program shall be paid by Respondent.

Respondent shall not practice as a vocational nurse until he has successfully completed the Program and has been so notified by the Board or its designee in writing.

#### **14. CHEMICAL DEPENDENCY SUPPORT/RECOVERY GROUPS**

Within five days of the effective date of this Decision, Respondent shall begin attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by Respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation.

#### **15. ABSTAIN FROM CONTROLLED SUBSTANCES**

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

#### **16. ABSTAIN FROM USE OF ALCOHOL**

Respondent shall completely abstain from the use of alcoholic beverages during the period of probation.

#### **17. SUBMIT BIOLOGICAL FLUID SAMPLES**

Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and Respondent's current employer.

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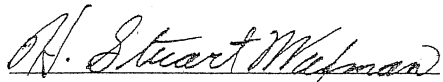
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## 18. VIOLATION OF PROBATION

If Respondent violates any condition(s) of his probation, the Board, after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of Respondent's license. If, during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board. Upon successful completion of probation, Respondent's license will be fully restored.

DATED: April 18, 2008



H. STUART WAXMAN

Administrative Law Judge

Office of Administrative Hearings

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6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

8  
9 **BEFORE THE**  
**BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. VN-2006-450

13 **DAVID GODINEZ**  
2979 Marengo Street #309  
14 Los Angeles, CA 90033

**A C C U S A T I O N**

15 Vocational Nurse License No. VN 201944

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this  
21 Accusation solely in her official capacity as the Executive Officer of the Board of Vocational  
22 Nursing and Psychiatric Technicians ("Board"), Department of Consumer Affairs.

23 2. On or about December 10, 2002, the Board issued Vocational Nurse  
24 License No. VN 201944 to David Godinez ("Respondent"). The Vocational Nurse License will  
25 expire on June 30, 2008, unless renewed.

26 3. On or about July 19, 2006, the Board issued Citation No. 06-0087-L to  
27 Respondent for violating Business and Professions Code section 2878, subdivisions (a)  
28 (unprofessional conduct); (f) (conviction of substantially related crimes); California Code of

1 Regulations, title 16, section 2518.6, subdivision (b) (ethical and behavioral standards of  
2 professional practice); and section 2521 (crimes or acts considered to be substantially related).  
3 The citation was issued with a fine in the amount of \$500.00 and is now final. A copy of that  
4 citation is attached as Exhibit A, and is incorporated by reference as though fully set forth herein.

#### 5 JURISDICTION

6 4. This Accusation is brought before the Board under the authority of the  
7 laws referenced below. All section references are to the Business and Professions Code unless  
8 otherwise indicated.

#### 9 STATUTORY PROVISIONS

10 5. Section 2875 of the Business and Professions Code ("Code") provides, in  
11 pertinent part, that the Board may discipline the holder of a vocational nurse license for any  
12 reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice  
13 Act.

14 6. Section 118(b) of the Code provides, in pertinent part, that the expiration  
15 of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action  
16 during the period within which the license may be renewed, restored, reissued or reinstated.  
17 Under section 2892.1 of the Code, the Board may renew an expired license at any time within  
18 four years after the expiration.

19 7. Section 2878 of the Code states:

20 "The Board may suspend or revoke a license issued under this chapter [the  
21 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)) for any of the following:

22 (a) Unprofessional conduct, which includes, but is not limited to, the following:

23 . . . .

24 (f) Conviction of a crime substantially related to the qualifications, functions, and  
25 duties of a licensed vocational nurse, in which event the record of the conviction shall be  
26 conclusive evidence of the conviction."

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28 ///



1           8.       Section 2878.5 of the Code states:

2           “In addition to other acts constituting unprofessional conduct within the meaning  
3 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person  
4 licensed under this chapter to do any of the following:

5           .....

6           (b) Use any controlled substance as defined in Division 10 of the Health and  
7 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an  
8 extent or in a manner dangerous or injurious to himself or herself, any other person, or the public,  
9 or to the extent that the use impairs his or her ability to conduct with safety to the public the  
10 practice authorized by his or her license.

11           (c) Be convicted of a criminal offense involving possession of any narcotic or  
12 dangerous drug, or the prescription, consumption, or self-administration of any of the substances  
13 described in subdivisions (a) and (b) of this section, in which event the record of the conviction is  
14 conclusive evidence thereof.”

15           9.       Section 490 of the Code provides, in pertinent part, that the Board may  
16 suspend or revoke a license when it finds that the licensee has been convicted of a crime  
17 substantially related to the qualifications, functions or duties of a licensed vocational nurse.

18           10.     California Code of Regulations, title 16, section 2521, states:

19           “For the purposes of denial, suspension, or revocation of a license pursuant to  
20 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or  
21 act shall be considered to be substantially related to the qualifications, functions or duties of a  
22 licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a  
23 licensed vocational nurse to perform the functions authorized by his license in a manner  
24 consistent with the public health, safety, or welfare.”

25           11.     Section 125.3 of the Code provides, in pertinent part, that the Board may  
26 request the administrative law judge to direct a licensee found to have committed a violation or  
27 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
28 and enforcement of the case.

1 **FIRST CAUSE FOR DISCIPLINE**

2 *(Conviction of a Substantially Related Crime)*

3 12. Respondent is subject to disciplinary action under section 2878,  
4 subdivision (f) and 490 of the Code, as defined in California Code of Regulations, title 16,  
5 section 2521, in that Respondent has been convicted of a crime substantially related to the  
6 qualifications, functions or duties of a licensed vocational nurse, as follows:

7 a. On or about November 15, 2006<sup>1</sup>, Respondent was convicted on his plea  
8 of nolo contendere to a violation of Vehicle Code section 23152(b), a misdemeanor [driving with  
9 blood alcohol content of 08% or higher], in the Superior Court of the State California, County of  
10 Los Angeles, Metropolitan Judicial District, Case No. 6MP10847, entitled *The People of the*  
11 *State of California v. David Godinez*.

12 b. The circumstances surrounding the conviction are that on or about August  
13 25, 2006, Respondent drove a vehicle, while having 0.08% and more, by weight of alcohol in his  
14 blood. Respondent was sentenced to thirty six (36) months summary probation, 232 hours of  
15 community service, required to complete a 3 month first offender alcohol and other drug  
16 education and counseling program, and is required to pay assessments and a restitution fine in the  
17 amount of \$1,690.

18 **SECOND CAUSE FOR DISCIPLINE**

19 *(Conviction of a Substantially Related Crime)*

20 13. Respondent is subject to disciplinary action under section 2878,  
21 subdivision (f) and 490 of the Code, as defined in California Code of Regulations, title 16,  
22 section 2521, in that Respondent has been convicted of a crime substantially related to the  
23 qualifications, functions or duties of a licensed vocational nurse, as follows:

24 a. On or about November 22, 2005, Respondent was convicted on his plea of  
25 nolo contendere to a violation of Vehicle Code section 23103(A), a misdemeanor (reckless

26 \_\_\_\_\_  
27 1. This crime was committed while Respondent was already serving 24 months criminal  
28 probation as a result of a prior conviction one year before on November 22, 2005, as set forth  
more full in paragraph 13(a) and (b).

1 driving), in the Superior Court of the State California, County of Los Angeles, Metropolitan  
2 Judicial District, Case No. 5CR12901, entitled *The People of the State of California v. David*  
3 *Godinez*.

4 b. The circumstances surrounding the conviction are that on or about August  
5 3, 2005, while his State of California Department of Motor Vehicle driver's license was  
6 suspended, Respondent drove a vehicle in a reckless manner so as to almost cause a collision  
7 with a police vehicle, endangered other vehicles and pedestrians, drove through three (3) posted  
8 traffic stop signs and one red traffic signal light without stopping, and drove at a high rate of  
9 speed in excess of the posted speed limit. Respondent was sentenced and placed on 24 months  
10 summary probation, ordered to perform 150 hours of community service, and ordered to pay  
11 attorney's fees, assessments and restitution in the amount of \$216.

### 12 THIRD CAUSE FOR DISCIPLINE

#### 13 *(Dangerous Use of Alcohol)*

14 14. Respondent is subject to disciplinary action under section 2878,  
15 subdivision (a) of the Code, on the grounds of unprofessional conduct, as defined in section  
16 2878.5, subdivision (b), in that on or about August 25, 2006, Respondent used alcoholic  
17 beverages to an extent, or in a manner dangerous or injurious to himself or the public, when he  
18 operated a vehicle while having 0.08% and more, by weight of alcohol in his blood.

### 19 FOURTH CAUSE FOR DISCIPLINE

#### 20 *(Conviction Involving the Consumption of Alcohol)*

21 15. Respondent is subject to disciplinary action under section 2878,  
22 subdivision (a) of the Code, on the grounds of unprofessional conduct, as defined in section  
23 2878.5, subdivision (c), in that on or about November 15, 2006, Respondent was convicted of a  
24 crime involving the consumption of alcohol, as set forth in paragraph 12(a) and (b) above.

### 25 OTHER MATTERS

26 16. In order to determine the degree of discipline, if any, to be imposed on  
27 Respondent, Complainant also alleges the following:

28 ///

1 a. On or about January 31, 1995, Respondent was convicted on his guilty  
2 plea to a violation of Penal Code section 148, subdivision (a), a misdemeanor (resisting arrest of  
3 a public officer), in the Superior Court of California, County of Los Angeles, East Los Angeles  
4 Judicial District, Case No. 94M11807, entitled *The People of the State of California v. David*  
5 *Godinez*.

6 b. The circumstances surrounding the January 31, 1995 conviction are that  
7 on or about September 12, 2004, Respondent was detained by a police officer for fighting in  
8 public and subsequently arrested for refusing to comply with the police officer's orders and  
9 resisting arrest.

10 c. On or about January 4, 2000, Respondent failed to appear on a written  
11 promise in the Superior Court of California, County of Los Angeles, East Los Angeles Judicial  
12 District, under Case No. 94M11807, entitled *The People of the State of California v. David*  
13 *Godinez*. Two bench warrants were issued for his failure to appear.

14 d. On or about January 8, 2000, Respondent was convicted by the superior  
15 court of two counts of violating Vehicle Code section 40508, subdivision (a), a misdemeanor  
16 (failure to appear on a written promise), in the Superior Court of California, County of Los  
17 Angeles, East Los Angeles Judicial District, Warrant Nos. A571661980 and 4904256194,  
18 entitled *The People of the State of California v. David Godinez*.

19 **PRAYER**

20 *WHEREFORE*, Complainant requests that a hearing be held on the matters herein  
21 alleged, and that following the hearing, the Board issue a decision:

22 1. Revoking or suspending Vocational Nurse License No. VN 201944, issued  
23 to David Godinez;

24 2. Ordering David Godinez to pay the Board the reasonable costs of the  
25 investigation and enforcement of this case, pursuant to Business and Professions Code section  
26 125.3; and

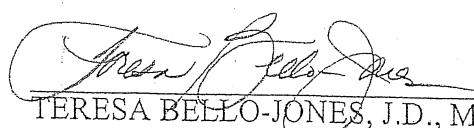
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3. Taking such other and further action as deemed necessary and proper.

DATED: October 29, 2007



TERESA BELLO-JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
State of California  
Complainant

LA2007601366  
Revised Accusation  
(DAT 10/18/07)

NOTED FOR...  
FILED...  
OCT 30 2007  
#1000004